IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18/03/2004

CORAM

THE HONOURABLE MR.JUSTICE V.S.SIRPURKAR
AND
THE HONOURABLE MR.JUSTICE F.M.IBRAHIM KALIFULLA

Criminal Appeal No.310 of 2004

Shahul Hammeed ... Appellant

-Vs-

State represented by
Deputy Superintendent
Q Branch, CID, Chennai-5
(Central Crime Branch X
Cr.No.298/2002). ... Respondent

PRAYER: Appeal against the order dated 5.2.2004 in Cr.M.P.No.113 of 2 003 on the file of the learned Special Judge, Special Court under the Prevention of Terrorism Act, Poonamallee.

!For Appellant : Mr.K.Chandru, Senior Counsel
for Mr.Yashod Vardhan

^For Respondent : Mr.I.Subramanian
Public Prosecutor

:J U D G M E N T

(Judgment of the Court was delivered by V.S.SIRPURKAR, J.)

The accused is facing a prosecution for the commission of offences under Section 21(2) and (3) of the Prevention of Terrorism Act, 2002 (in short 'POTA'), apart from Section 10 of the Unlawful Activities (Prevention) Act, 1967. The allegation against him is that he has arranged for a meeting on 13.4.2002, where inflammatory speeches were given by the speakers, suggesting their support and inviting the support of the public to a banned organisation called Liberation Tigers of Tamil Eelam (LTTE). The offence having taken place in 2002, the other accused persons later on came to be arrested. However, this accused came to be arrested only on 11.3.2003, as according to the accused he surrendered before the Deputy Superintendent of Police, 'Q' Branch.

2. It is now a settled position that if the accused, who face the prosecution for the offences under POTA are behind the bars for one year, after one year the question of their bail application would be considered in the light of ordinary law and not in the line of Section 4 9(6) of POTA. The Supreme Court has already held and confirmed the judgment by this Court in "NEDUMARAN P. AND FIVE OTHERS -VS- STATE" reported in 2004(1) C.T.C.721, granting bail to the other co-accused in this case, who were charged with making the inflammatory speeches. Therefore, there will be no question to take any different view than in case of those persons. The maximum punishment that could be ordered against the accused is also not exceeding ten years. In view of the bail already having been granted to the co-accused on the basis of the Supreme Court judgment, we think it fit to grant bail to the present accused also.

3. However, learned Public Prosecutor points out that the trial is already in progress and that though this accused was required by the police, he was apprehended an year after the said meeting took place.

4. In order to allay the apprehension of the learned Public Prosecutor that he might abscond again, we would direct that on his release on bail, he shall be report to 'Q' branch police station everyday at 9 'O Clock in the evening. He shall be released on bail on the following conditions.

1.He shall execute a bond in the sum of Rs.50,000/- (Rupees Fifty Thousand only) with two sureties for the like sum, to the satisfaction of the Trial Court.
2.He shall not in any way tamper with the evidence or try to influence the witnesses.
3.He shall not address any public meeting during the pendency of the trial.
4.If he holds passport, he shall deposit the same with the trial Court.

5.He shall not in any manner keep any connection with the banned organisations like LTTE during the pendency of the trial.
6.He shall also attend all the hearings before the trial Court regularly without impeding the progress of the trial.
7.Lastly, he shall desist from giving any interview to any mediaaudio and video-or by issuing any press statement, etc.

5. With the above observations, the criminal appeal is allowed.

KST

To

1.Special Judge,
Special Court under the Prevention of Terrorism Act,
Poonamallee.

2.Deputy Superintendent

Q Branch, CID, Chennai-5
(Central Crime Branch X
Cr.No.298/2002).

3.The Public Prosecutor
High Court, Madras.